

**OPINION
49-129**

July 29, 1949 (OPINION)

MINERALS

RE: Deeds

Your letter of the 27th inst. re the above has been received and referred to my desk.

Our court has held that mineral rights in land can be severed from surface rights by reservation in a deed, and such reservation is an interest in land. Northwestern Improvement Co. v. Oliver County, 38 N.D. 57, 164 N.W. 315.

Mineral rights, being an interest in land, can be conveyed only by deed. Until there is a severance of the mineral rights from the surface right either by deed directly, or by reservation in a deed conveying surface rights, taxes assessed and levied upon the land are assessed and levied upon the whole interest in the land, that is, upon both the surface right and the mineral right. Therefore, when lands against which there are unpaid tax levies are conveyed, or mineral rights only therein are conveyed by deed, such deed may not be recorded in the office of the register of deeds unless and until such taxes are paid. Section 11-1312 N.D.R.C. 1943.

Royalties are personal property, for there can be no royalty from oil or gas or minerals taken from the land until there has been an actual severance from the land, and such severance makes of the royalty personal property. Therefore, a lease for mining purposes wherein a royalty is reserved is not a deed and is not a conveyance of land or an interest in land. Therefore, no taxes are required to be paid before a so-called "oil lease" is filed with the register of deeds for record.

This is the first time this matter has been called to our attention, so we do not know the practice in other counties.

WALLACE E. WARNER

Attorney General